

CHILDREN'S HEALTH AND ENVIRONMENT COMMITTEE

DATE: May 5, 2005

CALLED TO ORDER: 6:07 p.m.

ADJOURNED: 8:51 p.m.

ATTENDANCE

ATTENDING MEMBERS

Angela Mansfield, Chair
Patrice Abduallah
Greg Bowes
Jim Bradford
Susie Day
Scott Keller
William Oliver
Steve Talley

ABSENT MEMBERS

AGENDA

PROPOSAL NO. 45, 2005 - amends the Code by establishing nonsmoking areas
"Do Pass As Amended"

Vote: 6-2

CHILDREN'S HEALTH AND ENVIRONMENT COMMITTEE

The Children's Health and Environment Committee of the City-County Council met on Thursday, May 5, 2005. Chair Angela Mansfield called the meeting to order at 6:07 p.m. with the following members present: Patrice Abdullah, Greg Bowes, Jim Bradford, Susie Day, Scott Keller, William Oliver, and Steve Talley. Councillor Lincoln Plowman was also in attendance.

PROPOSAL NO. 45, 2005 - amends the Code by establishing nonsmoking areas

Chair Mansfield stated that it is a bit unusual to spend so much time on one proposal during the Committee process, but it was important to have ample public input on this issue. She said that the proposal that was introduced in response to community concerns was very comprehensive. She said that hearings allowed for medical and scientific evidence to be presented and allowed the hospitality industry to weigh in on the matter, even though all workplaces are covered in the proposal. She said that the four public forums brought close to 200 concerned constituents out to speak on this matter. She thanked the public for letting the Committee know their thoughts. She said that Councillor Bowes will be presenting some amendments that have come about due to the input received. These amendments provide exemptions for bars, taverns and private clubs. The amendments also eliminate restrictions in outdoor areas, except for the 10-foot restriction within an entrance or exit to a building. Some said that 60 days was not enough time to adjust to the change, and therefore the effective date was extended to six months to October 1, 2005. She said that the Committee is aware that with these changes, they have the support of the general community, the Indianapolis Chamber of Commerce, the health community (although they wanted it to be much stricter), and the Minority Health Coalition. She said that it is interesting that the Chamber has taken so much time to study this issue and its effect on their members, and these amendments take into consideration almost all of their recommendations. She said that the *Indiana Business Journal* and *Indianapolis Star* have printed several editorials in support of the ordinance. She said that there has been some discussion about further extending the effective date, but she personally does not see any justification for doing so. She said that the general community, the Indianapolis Chamber of Commerce, and others do not feel additional time is needed.

Councillor Bradford moved, seconded by Councillor Day, to "Table" Proposal No. 45, 2005. He said that this amendment is pretty new, and there are others in the community who have not been heard on these changes. This proposal will cause Broad Ripple to basically go to all over-21 establishments and will hurt the high-end establishments like St. Elmo's Steak House.

Councillor Abdullah said that to consider tabling the proposal undermines all the work that has been done and the time and effort the community has put into this process. He said that he would speak against the motion to table and urge his fellow Committee members to move forward and support the ordinance and do what they know to be right.

Councillor Oliver said that this journey began several months ago and there have been numerous individuals to present testimony. He said that they have had time to take it all in and they need to now proceed with deliberate speed. More study will not accomplish anything, and he urged his fellow Councillors to oppose the motion.

Chair Mansfield said that she agrees with Councillors Abdullah and Oliver that there has been ample time and information to make an informed decision. She said that the proposal was introduced on February 7, 2005, and they have had several months to review the issues. She said that she believes when Committee members hear the details of these amendments, they will gain a better understanding that the amendments actually are in response to all the input that has taken place.

Councillor Bradford said that he received a call from the *Indianapolis Star* and this amendment was obviously leaked to the paper before he even saw it. He said that the amendment was then e-mailed to him by Councillor Bowes the next day. He said that 10% of all liquor license holders in the State of Indiana are affected, and they do not have an opportunity to respond to these changes. He said that the City and State have no problem collecting taxes from these business owners, but then want to turn around and tell them how to run their business. Many of these individuals have spent thousands of dollars to renovate their facilities recently without knowing they would need further changes due to a new law. He said that they are now being asked to pay an extra one percent while lawmakers are not willing to listen to them.

Councillor Keller said that he is against tabling the proposal. He said that the amendments are extremely easy to understand and are pretty much what the Chamber of Commerce asked for on behalf of their members. He said that he has spoken to businesses today and almost all are in favor of the amendments. He said that there has been ample opportunity for discussion and public input.

Councillor Bowes said that he has done his best to share these amendments early and often in response to the concerns that have been expressed from the hospitality industry, the Chamber, and other Councillors. He said that these amendments will help business owners and makes the proposal less strict than the original that was proposed. He said that there should be no more delay.

The motion to "Table" Proposal No. 45, 2005 failed by a vote of 2-6, with Councillors Bradford and Day casting the affirmative votes.

Councillor Bowes moved, seconded by Councillor Talley, to "Amend" Proposal No. 45, 2005 as per Exhibit A.

Councillor Bradford asked if this Exhibit is the same version that he received earlier. Councillor Bowes said that there was one technical change to use the proper license name by changing "food service permit" to "retail food establishment license" in Sec. 616-205 (a) (8) (f) (ii). He said that this is the only change.

Chair Mansfield invited Dr. Virginia Caine, executive director of the Marion County Health Department (MCHD), to come forward to explain how the proposal will be enforced after Councillor Bowes presents the amendments.

Councillor Bowes detailed the following changes:

- In Sec. 616-101 (m), the language "certain outdoor areas" was eliminated.
- The current Sec. 616-203. "Prohibition of smoking in outdoor areas" was eliminated in its entirety. He said that there are now no restrictions on smoking in outdoor areas other than the 10-foot requirement from an entrance or exit to a building, which he will refer to later.
- In the old Sec. 616-204 and newly numbered Sec. 626-203, language was added to clarify that smoking is prohibited in government owned facilities "if those vehicles or enclosed areas are used for any governmental function." He said that this amendment was in response to Councillor Bradford's input about the confusion in this section.
- In the new Sec. 616-204 and old Sec. 616-205, the word "insure" was changed to "ensure" to be more grammatically correct.
- In the newly numbered Sec. 616-205, section number references were changed to reflect the above changes, and item number (8) was eliminated as previously written, since outdoor areas are no longer restricted and this entire section deals with outdoor patio seating at bars and restaurants. He said that outdoor seating now follows the restrictions of the eating establishment. A new item number (8) was added to provide an exemption for bars or taverns with certain requirements:
 - The establishment must hold a beer, liquor, or wine retailer's permit under the laws of Indiana.
 - The establishment must not allow any customer under the age of 21 to enter and may not employ any person under the age of 18.
 - The establishment cannot be physically located within another business that is required to be smokefree. If a bar is a smaller portion of a larger restaurant owned by the same business, the entire restaurant, including the bar area, must be smokefree.
 - The establishment cannot be a restaurant that primarily sells food.
 - The establishment must provide notice to the MCHD annually with its retail food establishment license application as to its intent to be an over-21 establishment that allows smoking. For 2005, this notice must be sent by October 1, 2005. Councillor Bowes said that MCHD is willing to add a checkbox to their form to accommodate this exemption. Bars will not be

allowed to submit this application more than once in a calendar year, and therefore they cannot choose to be smokefree one day and then become a smoking establishment the next. Councillor Bowes said that they will have to make a choice.

- A new item (9) was also added under Sec. 616-205 to provide an exemption for clubs that meet certain requirements:
 - They must be exempt from federal income taxation.
 - The establishment must be a "club" or "fraternal club" as defined by the Indiana Code (Exhibits B and C).
 - The establishment must hold a beer, liquor, or wine retailer's permit under the laws of Indiana.
 - The establishment must only provide food or alcohol to its bona fide members and their guests.
- In Sec 616-301, the "no smoking" sign requirement was eliminated, as this requirement is already mandated by State law, and it is therefore redundant to include it in this ordinance.
- A new item (b) is added to Sec. 616-301 to provide that all establishments exempted under the previous section must post a sign that lets all customers know they are a smoking establishment.
- In Sec. 616-401, item (b) was eliminated because police officers and sheriff's deputies already have the right to enforce any ordinance and issue citations.
- A new item (d) was added to Sec. 616-401 to make owners and managers of those establishments which have been granted an exemption responsible to ensure that no patrons under the age of 21 enter the establishment.
- Section 3 changes the effective date from 60 days to six months, making the effective date October 1, 2005.

Councillor Bowes said that the amendment for Section 3 is the remaining controversial amendment. He said that the amendment extends the effective date another four months in response to the business community saying that they needed time to adjust to the change. He said that personally he does not see why more time is needed, as in most cases, it will simply mean removing ashtrays and asking people not to smoke. He said that there is no special investment required. He said that the extension was made, however, to ensure that businesses fully understand the new regulations and to give MCHD the time to conduct an educational campaign.

Chair Mansfield invited Dr. Caine to comment on MCHD's plans for enforcement of this ordinance. Dr. Caine applauded the Committee for addressing this very sensitive public health issue. She said that the goal of this ordinance is to make the City the healthiest community it can be, and she applauded the proposal sponsors and Council President Talley for their efforts to address this problem. She detailed MCHD's plans to enforce the ordinance should it pass, as outlined in Exhibit D.

Councillor Oliver said that violations being issued for ashtrays or smoking receptacles closer than 10 feet from the exterior of an establishment concerns him. He said that

without providing these types of receptacles, the problem of littering might become more prevalent when the storefronts are right on the sidewalk and do not allow 10 feet for a receptacle to be located. Dr. Caine said that this is a very good point, and they will have to look at this further, as they certainly do not want citizens discarding their cigarettes on the sidewalk.

Councillor Bradford said that the proposal shows enforcement to be the Department of Metropolitan Development and other City divisions, and not MCHD. Dr. Caine said that there will need to be an addendum to the ordinance. She said that the Health Department must first have this ordinance passed by the Council before it can go before the Health and Hospital Corporation Board. Chair Mansfield said that once MCHD's board adopts the ordinance, then it becomes their law. Councillor Bradford asked once Indianapolis passes the ordinance if this then gives MCHD the authority to go to the excluded cities and enforce these regulations on them, as well. Councillor Bowes said that the Council has no power over the excluded cities or over the MCHD. Councillor Bradford said that the Council appoints individuals to the MCHD board, so there is some limited control there. Councillor Bowes said that because they do not have authority over the Health Department, they could not technically include them in the ordinance as an enforcement agency. He said that it is his understanding that the Health Department is fully supportive of this ordinance and may exercise its own ordinance-writing power to give themselves the authority to enforce the same kinds of rules. He said with regards to whether or not they can do that in Lawrence, Speedway, and the other excluded cities, he does not know the answer to that. He said that this is something the MCHD would have to answer with regards to their jurisdiction. Councillor Bradford asked Dr. Caine to confirm for the Committee before Monday night's Council meeting whether or not MCHD has the authority to impose the same regulations on the excluded cities. Dr. Caine said that she will get legal clarification regarding this authority. She said, however, that she cannot presume to say how the board will vote with regards to such an issue.

Councillor Bradford asked with the added enforcement and possible hiring of more inspectors, if this will cause the cost of Board of Health permits to increase. He said that the added costs of the education campaign may also cause increases in permit fees. Dr. Caine said that they have tried to design the program so that it will not create too much of an additional burden to their current program, and she does not believe it will cause any significant increase in costs. Councillor Bradford said if fees were increased, then the restaurants would again be paying for this added enforcement of places like law offices and hair salons. Chair Mansfield said that MCHD will not be the only people to enforce the ordinance, but simply the primary enforcers. Dr. Caine said that they are looking at, and feel confident they will receive, some subsidized funding to help with the costs of this program. Councillor Bradford asked if this is federal grant money. Dr. Caine said that it is.

Councillor Abdullallah asked if this enforcement would be primarily routine for inspectors and just an added step in their normal process. Dr. Caine said that this is correct. She

said that this would just require an added checkmark in the normal routine inspections and would most likely not require any additional staff or additional cost to restaurant owners.

Councillor Bowes asked about the educational/public relations campaign component of the program. He asked if Dr. Caine has talked to other cities who have gone smokefree and if they anticipate how long the campaign may take and if it can be successfully completed before October 1, 2005. Dr. Caine said that it can easily be conducted before October 1, 2005. She said that they have had an extensive amount of discussion with other cities who have passed similar ordinances. Councillor Bowes asked if in her discussions with other cities, anyone mentioned that the businesses complained that the educational campaign was not informative enough or not long enough. Dr. Caine said that they have not spoken with individual businesses, but have spoken with the Health Departments and city representatives, and these implementations have been well documented by the media and there have been some very successful campaigns. She added that from the Health Department's perspective, they would not require the full six months for implementation and education.

Councillor Oliver asked if the Chamber of Commerce has offered input that the six-month time period is reasonable for them to notify their members. Mark Fisher, business advocacy manager for the Indianapolis Chamber of Commerce, said that the Chamber supports a six-month implementation time frame as long as there is proper education provided. He said that if there is not support on the Council for this time frame, however, they would support a compromise, as compromise has brought them where they are today.

Dr. Caine thanked the Committee for being so thoughtful throughout this entire process. She added that whatever the MCHD can do to help further, please call on them to do so.

Councillor Bowes asked if Mr. Fisher has heard any legitimate business reason why the implementation date should be extended beyond the October 1, 2005 date. Mr. Fisher said that he has not heard from any of their members that this date would be problematic. Chair Mansfield asked how many members the Chamber has. Mr. Fisher said that they have 3,800 members. Chair Mansfield asked if they have heard from any of these members with regards to the effective date. Mr. Fisher said that the news article just came out yesterday, but they have not heard anything from their members as of yet.

Councillor Bradford asked of their 3,800 members, what percentage of those are actually in Indianapolis and Marion County. Mr. Fisher said that 75% of their members are in Marion County. Councillor Bradford asked how many of these Marion County members are restaurants. Mr. Fisher said that he cannot say for sure. Councillor Bradford asked if St. Elmo's Steak House is a member. Mr. Fisher said that they are. Councillor Bradford asked if the Chamber has talked to them regarding their views. Mr.

Fisher said that St. Elmo's came with the rest of the Restaurant and Hospitality Association and made a presentation when they came up with their position statement. Councillor Bradford asked if St. Elmo's had a problem with the ban. Mr. Fisher said that they would probably rather not see a ban at all, but he does not speak specifically for St. Elmo's. Councillor Bradford asked if a majority of the restaurants the Chamber represents oppose the ban. Mr. Fisher said that he cannot answer that. He said that they have not heard from their members that they are objecting to the Chamber's position. Councillor Bradford asked if the Chamber has polled all their members. Mr. Fisher said that they have asked for their members' comments several times. Councillor Bradford asked if Mr. Fisher should not call his members for their input. Mr. Fisher said that it is not possible for him to call all their 3,800 members in two days. He said, however, that they send out a weekly newsletter to all members and they have not heard anything negative from their members about their position. Chair Mansfield said that it is not really appropriate to put Mr. Fisher on the spot regarding his personal contact with members.

Councillor Bradford referred to the 10-foot requirement. He said that his restaurant has a deck entrance which is only 20 feet, but if a person cannot smoke within 10 feet of the door, then there would be no smoking on his deck. Chair Mansfield said that on the extra 10 feet of patio space, smoking would be allowed. Councillor Bradford said that in Broad Ripple most patios are very small and patrons usually have to walk through patios to get to the entrance. He said that patios are therefore not all smokefree. Councillor Bowes said that the 10-foot requirement is intended to keep smoke from getting inside a smokefree area. He said that any portion of the patio that is 10 feet from the entrance or exit, can be a smoking area, due to the elimination of the outdoor areas. He added, however, that if the establishment meets the exemption criteria and is designated a smoking establishment, there is no 10-foot requirement.

Councillor Bradford said that on many city blocks in Broad Ripple, there may be four bars in a row, and with larger crowds on weekends they will have to queue the lines to get in. He said with the 10-foot requirement, this would mean those standing in line would have to go out into the middle of the street in order to smoke, because the sidewalks are narrow, and the queue lines would be too close to the entrance. Councillor Bowes said that one of the reasons the requirement was amended at the last meeting from 50 feet to 10 feet was because of Councillor Bradford's concerns raised at a previous meeting. He said that he did visit Broad Ripple and counted out the feet and agreed that 50 feet was extensive. However, he does not believe going less than 10 feet is too extensive, and this will still leave room on the sidewalk for smokers. He said, however, that most of these places will fit the exemption and will already be smoking establishments, and therefore the 10-foot regulation would not apply.

Councillor Bradford asked why the language about a tobacco bar in operation on February 7, 2005 is still in the ordinance. He said that it seems this would only cover one establishment, Nicky Blaine's Cigar and Martini Bar. He said that another tobacco bar would then not be allowed in Indianapolis. Chair Mansfield said that another

tobacco bar could qualify through the bar or tavern exemption. Councillor Bradford asked then why the language is still included, other than to protect Nicky Blaine's. Chair Mansfield said that she does not see any reason to change the language, as she still sees a reason to classify tobacco bars differently when a large percentage of their revenue comes from the sale of tobacco items. Councillor Bowes said that this raises a good point. Those people who consider themselves a tobacco bar would probably fit under the bar and tavern exemption. The other concern was like that heard from those in the bowling industry who would rather no one be exempted if an ordinance was to be enacted. This brings the Committee back to the question as to whether anyone or no one should be given a break. He said that the community sentiment was that bars and taverns should be exempt. He said that it is difficult to determine where the line should be drawn.

Councillor Bradford asked if he understands correctly that an 18-year-old can be employed to work in a tavern. He said that according to State law, his 19-year-old daughter can go into any tavern or bar as long as she is accompanied by a parent or guardian. This ordinance says that his daughter could work for a tavern, but could not go in a tavern to eat with him. Councillor Bowes said that she could go into a smokefree bar. He said that the sentiment from the community was that if a person was drinking in a bar, they should be allowed to smoke. If a person was eating in a restaurant, they should not be exposed to secondhand smoke. He said that he personally does not think anyone should be exposed under the age of 21 at any time. Councillor Bradford said that Broad Ripple Steak House has an upper room bar, and a restaurant which is non-smoking on one side. This owner could have his daughter work there, but could never eat with his daughter if they decide to go to an over-21 establishment. Chair Mansfield said that this is not correct, because the Broad Ripple Steak House would not meet the smoking exemptions, as they are a restaurant which primarily sells food and the entire establishment would be smokefree. Councillor Bradford then asked if St. Elmo's and other high-end restaurants would automatically have to be smokefree and could not opt to be over-21 establishments. Chair Mansfield said that this is correct.

Councillor Bradford asked if 50% percentage of food sales qualifies an establishment as a restaurant instead of a bar. Councillor Bowes said that the language of the ordinance simply says an establishment which "primarily sells food." He said that they did not put a percentage in there because they did not want to box in an establishment. Councillor Bradford asked what happens to an establishment who one year sells more in alcohol and then the next sells more in food. Councillor Bowes said that they did not want to encourage owners to cheat and ring up beers as steak dinners in order to make the percentage cut-off. Councillor Bradford asked then if it depends on the application to the Board of Health and which box is checked. Councillor Bowes said that this is correct.

Councillor Keller said that the goal is to give businesses more choices. He said that the Committee is trying to heed the will of the people, and therefore there will be some

inconsistencies. With the original ordinance, there were not any complicated understandings, as it eliminated smoking everywhere. He said that they are now giving more choices to establishments. A smoking establishment can still have a non-smoking section.

Councillor Abdullah said that the effort was to carve out something that makes sense and responds to the requests of constituents. He said that they could nit-pick the ordinance back and forth, but this ordinance is formulated to save lives. He said that the Committee should try to see the positives in the ordinance for the protection of the community instead of trying to tear it apart bit by bit with specifics.

Councillor Day asked if an establishment could still have smoking and non-smoking sections. Chair Mansfield stated that if a bar met the exemptions to qualify as a smoking establishment, they could still have a non-smoking section if they wanted. Restaurants, however, must be smokefree and cannot have a smoking section. Councillor Keller added that at any time, without waiting for the annual exemption, a smoking establishment could become a non-smoking establishment.

Councillor Bradford asked about the 50-member requirement for clubs, and stated that within the old fire district, clubs are designated at 25 members. Councillor Bowes said that he searched for every mention of clubs he could find in the alcohol code and did not see this distinction. However, he will be glad to review this issue further to ensure they are not missing anything.

Councillor Bradford asked with regards to owners removing smoking paraphernalia, if this would include matches. He said that many restaurants would need matches to light a stove burner, pilot light, or candles on the tables. Chair Mansfield said that she believes inspectors and enforcement personnel will use common sense in this area.

Councillor Bradford asked if he can get a copy of Sec. 103-3 where all the fees and fines are outlined. Councillor Bowes said that this section contains numerous fees, and the fines would be handled the same as parking tickets without going to court. Councillor Bradford asked if this fine is \$100. Councillor Bowes said that it would be for the first offense. Councillor Bradford asked what the fee would be for the second offense. Councillor Bowes said that for multiple offenses, a judge would make a determination as to whether or not the individual is trying to comply with the law or not. Councillor Bradford asked if the second offense would then take the case to court. Councillor Bowes said that it would if it were in the same calendar year. Councillor Bradford asked which court these issues would go to. Councillor Bowes said that they would typically go to Environmental Court. Councillor Bradford asked if further offenses could lead to the revocation of a permit. Councillor Bowes said that the judge has the power to impose such revocation. Councillor Bradford asked if this simply refers to the Board of Health permit and not an alcohol license. Councillor Bowes said that he does not know if the judge has the authority to revoke an alcohol license, and that would be a complex legal issue. He said that the alcohol license regulating body could, however,

use ordinance violations as factors in revoking a license. Councillor Bradford said that they could not take away a law license of a law office that was not in compliance. Councillor Bowes said that they could not. Councillor Bradford asked if there were any other revocation of a permit other than the retail food permit. Councillor Bowes said that the ordinance was referring to the Board of Health's permit.

Councillor Oliver asked for an explanation of the excluded cities as it relates to this ordinance. Chair Mansfield said that this Council does not have jurisdiction over the excluded cities, but the Marion County Health Department does have county-wide jurisdiction and will most likely adopt what the Council passes. Councillor Bowes said that this ordinance would be enforceable over the entire county except for those excluded cities of Speedway, Lawrence, Beech Grove, and Southport. He said that he believes MCHD can require the excluded cities to abide by the same regulations, but the board could choose not to do so. Councillor Bradford said that he believes MCHD does have the authority, and then those excluded cities would have no public input into these regulations. Chair Mansfield said that the Board of Health meetings are public meetings, and the public would be allowed to testify at those.

Chair Mansfield called for public testimony as it relates specifically to the amendments being offered this evening.

Mark Webb, Indiana Licensed Beverage Association, Marion County chapter, said that the "primarily sells food" language is very vague and he has concerns about a place that sells more than 50% of their revenue in food, but has always been considered a bar and has always been age-restricted. He said that there are three types of alcohol permits, and the largest one requires \$100,000 in food sales in an effort to turn bars into restaurants and discourage drunk driving. This ordinance undermines that effort.

Larry Vaughn, citizen, stated that this is a convention city and many drinking conventions are brought to this city. He asked how out-of-state visitors will be pursued to pay these fines. He added that this is unnecessary and will be arbitrarily applied against black businesses. He said that this ordinance intrudes on civil rights.

Mark Fisher, business advocacy manager of the Chamber of Commerce, applauded the Committee for their efforts at compromise. He said that they still have concerns about the 10-foot regulation as they would like to see no outdoor restrictions. He added that the language regarding a restaurant that "primarily sells food" is very vague.

Bill Bowes, citizen, said that 250 people die each year and 400 to 500 people are hospitalized from secondhand smoke-related diseases. He said that waiting six months could bring 100 more deaths and numerous more hospitalizations, and he believes implementation could take place even more expeditiously.

Tim Filler, citizen, applauded the Committee for having the courage to take on this issue. He said the ordinance is not as comprehensive as he would prefer, but it is a great accomplishment and a good start.

Joe Wilson, bar owner, named several small neighborhood restaurants that would not meet the bar exemptions because of food sales and said that these businesses will still be hurt with this ordinance.

John Livengood, Restaurant and Hospitality Association, said that this amendment does not satisfy the Association's concerns. He said that all bars and taverns are also restaurants according to Indiana law and he also is concerned by the vague wording of restaurants which "primarily sell food." He said that he believes the age requirement should be 18 years old, as State law allows 18-year-olds to be in a bar with a parent or guardian and 18 is the legal age of majority.

Mary Wyman, Peppy Grill, stated that 80% of her customers smoke, and this ordinance, even with the amendments, will cause her to go out of business, as she will not qualify for a bar exemption.

Rebecca Pardue, Marty's Bar and Grill, said that these amendments do not address her concerns and this ordinance will kill her business. She said that she will not be allowed to offer special karaoke events for children, which the neighborhood enjoys.

Rhoda Walker, owner of three neighborhood bars, said that she will not be able to put a restaurant in one of her bars as she wants to because of this amendment.

Nick Baker, American Cancer Society, said that he supports the changes. Although he would like the ordinance to be more comprehensive, this will go a long way to protect the health of citizens.

Betty Bledsoe, citizen, thanked the Committee for considering a compromise and for all the efforts they have made to provide a healthy environment for everyone. She said that there is always room for compromise, and there is always room for growth. She added that she would like to see the ordinance go into effect today.

Councillor Bradford asked where bars in hotels would be categorized. Chair Mansfield said if the bar is not located within another business that is required to be smokefree, it could be a smoking establishment. She said that hotel public areas are already smokefree, with 20% of rooms set aside for smoking. She said that a hotel bar, unless it was stand-alone, would not fit the other criteria for an exemption if it were located within a restaurant in the hotel.

Councillor Bradford asked about the Convention Center and the Sports Spectrum betting facility, which is housed within the Claypool hotel, but is an over-21 betting establishment. Councillor Bowes said that the Convention Center would be smokefree,

and if the Sports Spectrum met the other bar and tavern exemption requirements, they could be a smoking establishment. He said that this amendment gives establishments some self-selection and allows them to prove that they qualify for an exemption. He said that not every business can be exempted in order to protect the community, and he tried to draw the line to most closely reflect community sentiment.

Councillor Keller said that he has confidence in the Council and the MCHD board that this ordinance will be administered well. If changes are needed in the future, they can be made.

Councillor Oliver moved, seconded by Councillor Talley, to call for the question on the motion to "Amend" Proposal No. 45, 2005. Proposal No. 45, 2005 was amended by a vote of 7-1, with Councillor Bradford casting the negative vote.

Councillor Talley said that he has heard from a number of small businesses that would like to comply with the ordinance but are not members of the Chamber of Commerce because they are smaller establishments. He said that one in particular is a small establishment with 11 tables, with 80 to 85% of customers who smoke, run by a single mother who has taken a second mortgage on her home to help finance her business. He said that this owner is concerned about the effective date. Although she feels it would be to her benefit to become smokefree, she is uncomfortable about the unforeseen effect to her business because of the second mortgage on her home. He said that another business owner just spent \$160,000 remodeling and is uncomfortable with the amount of time they must come into compliance after spending so much money. He said that many of these owners base their businesses on three or five-year business plans and need time to reconstruct those plans. He said that it is not as easy as simply removing ash trays from the tables and putting up signage.

Councillor Talley moved, seconded by Councillor Keller, to change the effective date from October 1, 2005 to April 1, 2006.

Councillor Keller said that he would like to see it happen sooner, but he also understands the need for education and for businesses to make plans about how to proceed to make their business the most profitable it can be.

Chair Mansfield said that she is opposed to the extension of the effective date any further. She said that the Committee has been discussing this issue for nine months, and she believes many compromises have already been made. She said that she does not want to seem flippant about the fear of the unknown for many of these business owners, but the health concerns also need to be considered.

Councillor Bowes agreed and said that both the Chamber and MCHD said that six months would be sufficient and he has not really heard a legitimate reason to extend the date. He said that only those who oppose the ordinance as a whole would really benefit from the extension. He said that they need to take steps to protect citizens' health now.

Councillor Oliver said that he will also oppose the amendment, because he has not heard anything that would explain a reason for a delay and he wants to protect children now.

Councillor Talley's motion to "Amend" Proposal No. 45, 2005 failed by a vote of 2-6, with Councillors Talley and Keller casting the affirmative votes.

Councillor Bradford said that he is sorry to vote against Councillor Talley's motion, as he would like to see the proposal tabled, but prolonging it further would make a bad law even worse.

Councillor Talley said that he does not take any negative votes as personal votes against him, but he was simply trying to accommodate the concerns of his constituents. He said that he appreciates all the hard work the chair has put into these hearings and into the ordinance. He said that it has been a difficult issue. He added that no one is more committed to a smokefree environment than him because of the personal effect this issue has had on his family. He said that the first thing he did as President of the Council was to set up this special committee to address the smokefree issue and other issues that affect children. Councillor Talley said that he does not, however, want those who cannot afford to be represented by the Chamber of Commerce to have their views less represented. He said that the national chain restaurants will survive, but some small businesses may not. Those that do, it will take them longer to feel comfortable that they will survive.

Councillor Abdullah commended everyone on their efforts. He said that this was a hard decision, but the right thing to do.

Councillor Abdullah moved, seconded by Councillor Bowes, to send Proposal No. 45, 2004 to the full Council with a "Do Pass As Amended" recommendation. The motion carried by a vote of 6-2, with Councillors Bradford and Day casting the negative votes.

Chair Mansfield thanked the Committee for the tremendous hours they have put into this issue and thanked the public for coming forward and giving their input into the process. Councillor Talley thanked Chair Mansfield for all of her hard work and her patience and graciousness with both Committee members and the public. Councillor Abdullah thanked Councillor Bowes for all his hard work in helping to draft the ordinance and its amendments. There being no further business, and upon motion duly made, the meeting was adjourned at 8:51 p.m.

Respectfully Submitted,

Angela Mansfield, Chair

AM/ag